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U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA** **FAX FILING**

10 **SACV14-00053 -CJC (RUBx)**

11 **ROBERT MASTERS, Individually And On**
12 **Behalf Of All Others Similarly Situated,**

Case No.:

13 **Plaintiff,**

CLASS ACTION COMPLAINT

14 **v.**

15 **AVANIR PHARMACEUTICALS, INC.,**
16 **KEITH A. KATKIN, CRAIG A.**
17 **WHEELER, CORINNE H. NEVINNY,**
18 **DENNIS G. PODLESACK, HANS E.**
19 **BISHOP, DAVID J. MAZZO, and SCOTT**
20 **M. WHITCUP**

21 **Defendants.**

22 Plaintiff Robert Masters ("Plaintiff"), by his attorneys, alleges upon information and
23 belief, except as to those allegations pertaining to Plaintiff, which are alleged upon
24 personal knowledge, as follows:

25 **NATURE AND SUMMARY OF THE ACTION**

26 1. This is a shareholder class action brought by Plaintiff individually and
27 on behalf of shareholders of Avanir Pharmaceuticals, Inc. ("Avanir" or the
28 "Company") to enjoin the shareholder vote scheduled to be held at the annual
general meeting of Avanir shareholders on February 12, 2014 at the Renaissance
ClubSport Aliso Viejo Hotel, 50 Enterprise, Aliso Viejo, California 92656 (the
"Shareholder Vote").

1 2. On December 30, 2013 Avanir filed with the Securities and Exchange
2 Commission (the “SEC”) a Definitive Proxy Statement on Form Schedule 14A (the
3 “Proxy”) in connection with the Shareholder Vote on five proposals, including
4 Proposal: (1) election of directors; (2) ratification of accounting firm; (3) advisory
5 vote on executive compensation; (4) approval of 2014 Plan to increase shares
6 available for future awards by 17,000,000 and (5) amendment of the Company’s
7 certificate of incorporation.

8 3. The Proxy talks about executive compensation in connection with
9 Proposal 3. In this section, the board of directors of Avanir (the “Board”) discusses
10 compensation based on “pay-for-performance” as how compensation is granted to
11 the Company’s named executive officers in order (1) to attract, motivate and retain a
12 highly skilled team of executives and (2) to align our executives’ interests with those
13 of our stockholders by rewarding short-term and long-term performance and tying
14 compensation to increases in stockholder value. The Proxy then goes on to discuss
15 how stock awards are given under the current 2005 Plan or 2014 Plan, if Proposal 4
16 is approved.

17 4. In the Proxy, the Board falsely misleads and states that if Proposal 4 is
18 not approved then the Company may be limited on its ability to make tax deductible
19 performance award under Internal Revenue (IRS) Code § 162(m), which are at least
20 in part discussed in Proposal 3. The truth is that the Company is already in default of
21 its 2005 Plan and is not eligible to make deduction under IRS § 162(m) since 2011.
22 The Proxy does not disclose this fact.

23 5. IRS §162(m) provides that public companies are not able to take a
24 federal tax deduction for compensation paid to certain executives if the
25 compensation is in excess of \$1 million in a year. To be exempt from IRS §162(m)
26 and its regulations, the compensation must qualify as performance-based by meeting
27 certain material terms. These terms must be disclosed to and approved by
28 shareholders. Moreover, the plan under IRS §162(m) must be renewed every 5 years

1 in order to comply with the law. Here, the 2005 Plan was not renewed at its 5th year
2 anniversary in 2011. Accordingly, the Company has failed to comply with IRS §
3 162(m).

4 6. In addition, Proposal 4 is not fully and accurately described in the
5 Proxy. In fact, the Proxy contains severe and material disclosure violations
6 regarding Proposal 4, including the fact that the deductions under Section 162(m) are
7 limited to \$1 million and not to \$2 million as erroneously stated in the Proxy.
8 Further, Proposal 4 does not disclose how, and at what rate, the 2014 Plan may dilute
9 Avanir's public shareholders. Without accurate and proper disclosure of this
10 information, the Company's public shareholders are misled and will be unable to cast
11 an informed vote on Proposal 4.

12 7. By failing to disclose accurate and material information, the Individual
13 Defendants (as defined below) have violated their fiduciary duties as well as violated
14 federal laws. As a result, Plaintiff alleges he, along with all other public
15 shareholders of Avanir common stock, is entitled to enjoin the 2014 Annual Meeting
16 unless and until Defendants remedy their breaches of fiduciary duty.

17 **JURISDICTION AND VENUE**

18 8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
19 in that Plaintiff's claims arise in part under the Constitution and the laws of the
20 United States, including Securities Exchange Act of 1934 ("Exchange Act") [15
21 U.S.C. §78aa] and Internal Revenue Code § 162(m). The Court has supplemental
22 jurisdiction over any claims arising under state law pursuant to 28 U.S.C. § 1367.

23 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
24 Avanir holds its principal place of business in the district of California.

25 **PARTIES**

26 10. Plaintiff is, and at all material times was, a shareholder of Avanir
27 common stock since prior to the wrongs complained of herein.
28

1 11. Defendant Avanir is a corporation duly organized and existing under the
2 laws of the State of Delaware. Avanir maintains its principal executive offices at 20
3 Enterprise, Suite 200, Aliso Viejo, CA 92656. Avanir acquires, develops, and
4 commercializes novel therapeutic products for the treatment of central nervous
5 system disorders. Avanir trades on the NASDAQ Stock Market under the ticker
6 symbol “AVNR.”
7

8
9 12. Defendant Keith A. Katkin (“Katkin”) is the Company’s President and
10 Chief Executive Officer. He has served as a director of the Company’s Board since
11 March 2007.
12

13 13. Defendant Craig A. Wheeler (“Wheeler”) has served as Chairman of the
14 Company’s Board since May 2007.
15

16 14. Defendant Corinne H. Nevinny (“Nevinny”) has served as a director of
17 the Company’s Board since March 2013.
18

19 15. Defendant Dennis G. Podlesak (“Podlesak”) has served as a director of
20 the Company’s Board since March 2005.
21

22 16. Defendant Hans E. Bishop (“Bishop”) has served as a director of the
23 Company’s Board since May 2012.
24

25 17. Defendant David J. Mazzo (“Mazzo”) has served as a director of the
26 Company’s Board since July 2005.
27

28 18. Defendant Scott M. Whitcup (“Whitcup”) has served as a director of the
Company’s Board since September 2005.

1 19. Defendants Katkin, Wheeler, Nevinny, Podlesak, Bishop, Mazzo, and
2 Whitcup are sometimes collectively referred to herein as the “Individual
3 Defendants.”
4

5 20. Collectively, the Individual Defendants and Avanir are referred to
6 herein as the “Defendants”.
7

8 **CLASS ACTION ALLEGATIONS**

9 21. Plaintiff brings this action on his own behalf and as a class action
10 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all holders
11 of Avanir common stock who are being and will be harmed by Defendants’ actions
12 described below (the “Class”). Excluded from the Class are Defendants herein and
13 any person, firm, trust, corporation or other entity related to or affiliated with any of
14 the Defendants.
15
16

17 22. This action is properly maintainable as a class action. The Class is so
18 numerous that joinder of all members is impracticable. As of January 10, 2014, there
19 were 152,107,256 common shares outstanding. The holders of these shares are
20 believed to be geographically dispersed throughout the U.S. The actual number of
21 Avanir shareholders will be ascertained through discovery.
22
23

24 23. There are questions of law and fact which are common to the Class and
25 which predominate over questions affecting any individual Class member. The
26 common questions include the following:
27
28

- a. Whether Defendants have breached their fiduciary duties with respect to Plaintiff and the other members of the Class in connection with Proposal 4 and the issuance of the Proxy;
- b. Whether Defendants have violated federal laws in connection with Proposal 4 and the Proxy;
- c. Whether Defendants are in compliance with Section 162(m);
- d. Whether Plaintiff and the other members of the Class would suffer irreparable injury if the Shareholder Vote proceeds as scheduled.

24. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

25. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

26. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class.

27. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

Name	Grant Date	Performance Stock Awards: Number of Shares of Stock or Units Granted	Option Awards Number of Securities Underlying Options Granted (1)	Exercise Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards (2)
Keith A Katlin	12/17/2012 12/17/2012	147,375 (3) 73,125(4)	225,000	\$2.59	\$775,541 \$189,394
Rohan Palekar	12/17/2012 12/17/2012	36,844(3) 26,156(4)	56,250	\$2.59	\$193,886 \$67,744
Joao Siffert MD	12/17/2012	49,125(3) 34,875(4)	75,000	\$2.59	\$285,514 \$90,326
Christine G. Ocampo	12/17/2012 12/17/2012	21,288(3) 8,963(4)	32,500	\$2.59	\$112,204 \$23,214

31. Similar awards as above were granted historically to Avanir's executives.

32. The Compensation Committee believes the best way to achieve the Company's annual goals and long-term objectives is by linking short-term and long-term cash and equity incentives to the achievement of measurable performance awards. Inherently, the ability to grant these awards in a tax-efficient manner is important to the Company and Section 162(m) allows for a deduction if done right.

The 2005 and 2014 Plan

33. On January 28, 2005, the Board filed a Proxy Statement (the "2005 Proxy") in connection with Avanir's 2005 Annual Meeting of Shareholders to be held on Thursday, March 17, 2005.

34. At the 2005 Annual Meeting, the Board sought shareholder approval for, among other things, the Company's 2005 Equity Incentive Plan. The 2005 Plan laid out the material terms of the performance goals related to the performance-based

1 compensation of the Company's executives. In the 2005 Proxy, the Board addressed
2 that approval of the Plan would allow them to grant tax-deductible awards under
3 §162(m).

4 35. Avanir's shareholders approved the 2005 Plan on March 17, 2005.

5 36. On December 27, 2005, the Board filed a Proxy Statement in
6 connection with the Company's 2006 Annual Meeting of Shareholders to be held on
7 Monday, February 6, 2006.

8 37. At the 2006 Annual Meeting, Avanir's Board sought, among other
9 things, shareholder approval of an amendment to the 2005 Plan. The purpose of the
10 amendment was to increase the number of shares available for issuance under the
11 plan in order to address the high demand by shareholders for a higher percentage of
12 compensation to be performance-based.

13 38. Avanir's shareholders approved the amendment to the 2005 Plan on
14 February 6, 2006.

15 39. Following shareholder approval, the Compensation Committee used the
16 2005 Plan each year to grant tax-deductible performance-based compensation to the
17 Company's named executive officers.

18 40. However, due to the fact that the 2005 Plan did not disclose specific
19 target levels of performance to the shareholders, but instead allowed the
20 Compensation Committee to select different performance targets each year, the
21 "shareholder-approved" status for purposes of §162(m) was only valid for five years
22 pursuant to §1.162-27(e)(4)(vi).

23 41. The Board is now asking for Proposal 4 to be approved to enact a 2014
24 Plan in order to sweep under the rug whatever problems the 2005 Plan have and pray
25 for a fresh star.

26 **The Board Allows Compliance With §162(m) to Expire and Fails to Inform**
27 **Shareholders**

42. On December 30, 2013, Avanir filed the Proxy with the SEC, informing shareholders of the Shareholder Vote on five proposals, including Proposal 4. In Proposal 4, the Board recommends that Avanir's public shareholders vote to approve the 2014 Plan. By structuring the 2014 Plan in a manner that complies with §162(m), the Board is hoping to save itself from substantial tax liability.

43. However, in order to continue to grant tax-deductible performance-based compensation under the 2005 Plan, the Board should have sought reapproval of the 2005 Plan by the 2011 Annual Meeting at the very latest. Since the Board failed to do this, as of February 11, 2011, five years from the 2006 Annual Meeting when the 2005 Plan was reapproved, the "shareholder-approved" status of the 2005 Plan for the purposes of §162(m) expired.

44. Moreover, the Board failed to regain the "shareholder-approved" status of the 2005 Plan for the purposes of §162(m) at both the 2012 and 2013 Annual Meetings.

45. Because the Company has no other plan in place, that was approved by shareholders and that is compliant with §162(m), the Compensation Committee has been unable to grant tax-deductible performance-based compensation under §162(m) since February 11, 2011.

The Materially Misleading and Incomplete Proxy Regarding Proposal 4

46. The Proxy filed with the SEC is misleading and/or incomplete. In particular, Proposal 4 of the Proxy states, in relevant part, the following:

PROPOSAL 4:

APPROVAL OF 2014 INCENTIVE PLAN

* * *

The Board believes that equity awards are important to incentivize our employees, including our executive officers, and our directors to remain with the Company, to motivate them to help achieve our corporate objectives, and

1 to align their interests with those of our stockholders. The Board has
2 recommended approval of the 2014 Plan, which allows for the issuance of
3 equity-based awards, because it believes, after consulting with Radford, its
4 compensation consultant, that the Company does not currently have a
5 sufficient number of shares available under our 2005 Equity Incentive Plan
6 (the “**2005 Plan**”) for new awards.

7 The Board believes that the 2014 Plan will promote the interests of
8 stockholders and is consistent with principles of good corporate governance,
9 including:

- 10 • *Independent Committee.* The 2014 Plan will be administered by our
11 Compensation Committee, which is composed entirely of independent
12 directors who meet the NASDAQ standards for independence.
- 13 • *No Discounted Stock Options or SARs.* All stock option and stock
14 appreciation rights (“**SAR**”) awards under the 2014 Plan must have an
15 exercise or base price that is not less than the fair market value of the
16 underlying common stock on the date of grant.
- 17 • *No Repricing.* Other than in connection with a corporate transaction affecting
18 the Company, the 2014 Plan prohibits any repricing of stock options or SARs
19 without stockholder approval.
- 20 • *Performance Awards.* Under the 2014 Plan, the Compensation Committee
21 may grant performance-based awards intended to qualify as exempt
22 performance-based compensation under Section 162(m) (“**Section 162(m)**”)
23 of the Internal Revenue Code of 1986, as amended (the “**Code**”) as well as
24 other performance-based awards.
- 25 • *Share Counting.* Each award granted under the 2014 Plan, other than a stock
26 option or SAR, will be counted against the share pool at a ratio of 1.32 shares
27 to each share underlying the award.

28 **Existing Equity Plan Information**

Effective March 2013, the Company was no longer able to issue grants from
its 2003 Equity Incentive Plan (the “**2003 Plan**”), which expired by its terms.
At present, the Company has one existing equity incentive plan (the 2005
Plan), which was previously approved by our stockholders. As of December
13, 2013, our 2005 Plan has 191,126 shares available for grant as equity
awards and contains an annual evergreen provision on the first day of the
Company’s fiscal year equal to the lesser of (1) 1% of the number of shares of
the Company’s common stock outstanding on the last day of the preceding
fiscal year, (2) 325,000 shares, and (3) such lesser number of shares as the
Board may determine. If the 2014 Plan is approved by our stockholders, the
Company does not intend to make further increases in the 2005 Plan’s share

pool pursuant to this evergreen provision. The 2005 Plan will expire by its terms in 2015.

The following table includes aggregated information regarding awards outstanding under both our 2003 Plan and 2005 Plan, the number of shares available for future awards under our 2005 Plan as of December 13, 2013, and the proposed number of shares issuable under the 2014 Plan:

	Number of shares	As a percentage of stock outstanding
Outstanding stock options	9,612,538	6.3%
Outstanding restricted stock units	2,869,860	1.9%
Other outstanding equity awards	—	—
Total shares subject to outstanding awards as of December 13, 2013	12,482,398	8.2%
Total shares available for future awards as of December 13, 2013 under 2005 Plan (1)	191,126	0.1%
Proposed shares available for future awards under 2014 Plan	17,000,000	11.2%

(1) We will no longer increase the share pool under our 2005 Plan pursuant to the annual evergreen feature following stockholder approval of the 2014 Plan.

Certain information with respect to all of our equity compensation plans in effect as of September 30, 2013 is provided on page 25 under the heading “Equity Compensation Plan Information.”

Reasons for Seeking Stockholder Approval

The Board believes that equity-based compensation is a critical part of the Company’s compensation program. Stockholder approval of the 2014 Plan would allow us to continue to attract and retain directors, executives, and other employees with equity incentives. In fiscal 2011, 2012 and 2013, the Company made equity awards under its existing equity incentive plans totaling approximately 2,993,888 shares, 3,501,642 shares, and 3,095,910 shares, respectively. The Company estimates, based on the advice of Radford to our Compensation Committee, that the availability of 17,000,000 shares would provide a sufficient additional number of shares to enable the Company to continue to make awards at historical average annual rates for the next four years. In approving the share pool under the 2014 Plan, at the advice of Radford, the Compensation Committee determined that reserving shares

1 sufficient for approximately four years of new awards at historical grant rates
2 is in line with the practice of our peer public companies.

3 In addition, stockholder approval of the 2014 Plan would preserve our ability
4 to grant a range of tax-efficient stock-based incentive awards under the 2014
5 Plan. Section 162(m) generally provides that compensation provided to a
6 publicly held corporation's CEO or any of its three most highly paid named
7 executive officers (other than its CEO or CFO) is not deductible by the
8 corporation for U.S. income tax purposes for any taxable year to the extent it
9 exceeds \$1 million. This limitation does not apply to compensation that
10 qualifies as exempt performance-based compensation by meeting certain
11 requirements under Section 162(m), including the requirement that the
12 material terms, including those of the related performance goals, be disclosed
13 to and approved by stockholders every five years. For the 2014 Plan, these
14 terms are described below under "Eligibility," "Individual Limits" and
15 "Performance Criteria." Stockholders are being asked to approve, among other
16 material terms, a set of business criteria on which performance goals may be
17 based for future performance awards under the 2014 Plan. Although
18 stockholder approval is one of the requirements for exemption under Section
19 162(m), even with stockholder approval there can be no guarantee that
20 compensation will be treated as exempt performance-based compensation
21 under Section 162(m). Furthermore, our Compensation Committee will
22 continue to have authority to provide compensation that is not exempt from
23 the limits on deductibility under Section 162(m).

24 Our stockholders last approved the 2005 Plan at our annual meeting held in
25 March 2005 and approved an amendment to the 2005 Plan in February 2006.
26 If stockholders do not approve this Proposal No. 4, the Company can continue
27 to make awards under the 2005 Plan, but the Company will have limited
28 shares available for future equity grants, the 2005 Plan will expire in 2015,
and its ability to make tax deductible performance awards to executive officers
will be limited under Section 162(m).

23 **Summary of the 2014 Plan**

24 The 2014 Plan will only become effective subject to approval by our
25 stockholders. In light of the limited available pool of shares under the 2005
26 Plan and the expectation that the 2014 Plan would be presented for approval at
27 the Annual Meeting, the Company has granted restricted stock units
28 contingent upon approval of the 2014 Plan. This summary is not a complete
description of all provisions of the 2014 Plan and is qualified in its entirety by
reference to the 2014 Plan, which is attached as Annex A to this Proxy
Statement.

1 *Purpose.* The purpose of the 2014 Plan is to advance the Company's interests
2 by providing for the grant to participants of stock-based and other incentive
3 awards.

4 *Plan Administration.* The 2014 Plan is administered by our Compensation
5 Committee, who has the authority to, among other things, interpret the 2014
6 Plan, determine eligibility for, grant and determine the terms of awards under
7 the 2014 Plan, and to do all things necessary or appropriate to carry out the
8 purposes of the 2014 Plan. Our Compensation Committee's determinations
9 under the 2014 Plan are conclusive and binding.

10 *Term.* No awards will be made after the tenth anniversary of the plan's
11 adoption, but previously granted awards may continue beyond that date in
12 accordance with their terms.

13 *Authorized Shares.* Subject to adjustment, the maximum number of shares of
14 our common stock that may be delivered in satisfaction of awards under the
15 2014 Plan is 17,000,000. Any shares of common stock underlying awards that
16 are settled in cash or that otherwise expire, terminate or are forfeited prior to
17 the issuance of stock, would again be available for issuance under the 2014
18 Plan. Shares of common stock that are withheld by the Company from an
19 award in payment of the exercise price of any award requiring exercise or in
20 satisfaction of the tax withholding requirements with respect to any award will
21 not again be available for issuance under the 2014 Plan. Each share of
22 common stock underlying an option or SAR award will count against the share
23 pool as 1.0 share, and each share of common stock underlying any other award
24 will count against the share pool as 1.32 shares. Any shares that again become
25 available under the 2014 Plan will be returned to the share pool at the rates
26 described in the preceding sentence. On December 26, 2013, the closing price
27 of our common stock as reflected on NASDAQ was \$3.29.

28 *Individual Limits.* The maximum number of shares for which options may be
granted and the maximum number of shares of stock subject to SARs which
may be granted to any person in any calendar year for purposes of Section
162(m) is, in each case, 2,000,000 shares. The maximum number of shares
subject to other awards that may be granted to any person in any calendar year
for purposes of Section 162(m) is 2,000,000 shares. The maximum amount
that may be paid to any person in any calendar year for purposes of Section
162(m) with respect to cash awards is \$2,000,000. Any awards granted in
excess of the foregoing limits will not be eligible to be excluded from the
applicable Section 162(m) limits and such excess amount may not be
deductible by the Company as performance-based compensation.

Eligibility. Our Compensation Committee selects participants from among the
key employees, directors, consultants and advisors of the Company and its

1 affiliates. Eligibility for options intended to be incentive stock options
 2 (“*ISOs*”) is limited to employees of the Company or certain affiliates. As of
 3 December 13, 2013, approximately 268 employees and 6 directors would be
 4 eligible to participate in the 2014 Plan.

5 *Types of Awards.* The 2014 Plan provides for grants of options, SARs,
 6 restricted and unrestricted stock and stock units, performance awards, cash
 7 awards and other awards convertible into or otherwise based on shares of our
 8 stock. Dividend equivalents may also be provided in connection with awards
 9 under the 2014 Plan.

- 10 • *Restricted and Unrestricted Stock:* A restricted stock award is an award of
 11 common stock subject to forfeiture restrictions, while an unrestricted stock
 12 award is not subject to restrictions.
- 13 • *Stock Options and SARs:* The 2014 Plan provides for the grant of ISOs, non-
 14 qualified stock options (“*NSOs*”), and SARs. The exercise price of an option,
 15 and the base price against which a SAR is to be measured, may not be less
 16 than the fair market value (or, in the case of an ISO granted to a ten percent
 17 stockholder, 110% of the fair market value) of a share of common stock on
 18 the date of grant. Our Compensation Committee determines when stock
 19 options or SARs become exercisable and the terms on

20 ***

21 which such awards remain exercisable. Stock options and SARs will generally
 22 have a maximum term of ten years. SARs are payable in cash, in shares of our
 23 common stock or in a combination of cash and shares.

- 24 • *Stock Units:* A stock unit award is denominated in shares of common stock
 25 and entitles the participant to receive stock or cash measured by the value of
 26 the shares in the future. The delivery of stock or cash under a stock unit may
 27 be subject to the satisfaction of performance or other vesting conditions.
- 28 • *Performance Awards:* A performance award is an award the vesting,
 settlement or exercisability of which is subject to specified performance
 criteria.
- *Cash Awards:* A cash award is an award denominated in cash.

Vesting. Our Compensation Committee has the authority to determine the
 vesting schedule applicable to each award, and to accelerate the vesting or
 exercisability of any award.

Termination of Employment. Our Compensation Committee determines the
 effect of termination of employment or service on an award. Unless otherwise
 provided by our Compensation Committee or in an award agreement, upon a
 termination of employment or service all unvested options and other awards
 requiring exercise will terminate and all other unvested awards will be
 forfeited.

1 *Performance Criteria.* The 2014 Plan provides that grants of performance
2 awards may be made based upon, and subject to achieving, “performance
3 objectives” over a specified performance period. Performance objectives with
4 respect to those awards that are intended to qualify as “performance-based
5 compensation” for purposes of Section 162(m) are limited to an objectively
6 determinable measure of performance relating to any, or any combination of,
7 the following (measured either absolutely or by reference to an index or
8 indices and determined either on a consolidated basis or, as the context
9 permits, on a divisional, subsidiary, line of business, project or geographical
10 basis or in combinations thereof): sales; revenues; assets; expenses; earnings
11 before or after deduction for all or any portion of interest, taxes, depreciation,
12 or amortization, whether or not on a continuing operations or an aggregate or
13 per share basis; return on equity, investment, capital or assets; one or more
14 operating ratios; borrowing levels, leverage ratios or credit rating; market
15 share; capital expenditures; cash flow; stock price; stockholder return; sales of
16 particular products or services; customer acquisition or retention; acquisitions
17 and divestitures (in whole or in part); joint ventures and strategic alliances;
18 spin-offs, split-ups and the like; reorganizations; recapitalizations,
19 restructurings, financings (issuance of debt or equity) or refinancings; or
20 regulatory and/or clinical development; intellectual property protection; and
21 any other performance metric approved by the Compensation Committee
22 designed to increase stockholder value.

23 To the extent consistent with the requirements for satisfying the performance-
24 based compensation exception under Section 162(m), our Compensation
25 Committee may provide in the case of any award intended to qualify for such
26 exception that one or more of the performance objectives applicable to an
27 award will be adjusted in an objectively determinable manner to reflect events
28 (for example, acquisitions and divestitures) occurring during the performance
29 period of such award that affect the applicable performance objectives.

30 *Transferability.* Awards under the 2014 Plan may not be transferred except by
31 will or by the laws of descent and distribution, unless (for awards other than
32 ISOs) otherwise provided by our Compensation Committee.

33 *Corporate Transactions.* In the event of a consolidation, merger or similar
34 transaction, a sale or transfer of all or substantially all of the Company’s assets
35 or a dissolution or liquidation of the Company (each, a “**Covered
36 Transaction**”), our Compensation Committee may, among other things,
37 provide for the continuation or assumption of outstanding awards, for new
38 grants in substitution of outstanding awards, for the accelerated vesting or
39 delivery of shares under awards or for a cash-out of outstanding awards, in
40 each case on such terms and with such restrictions as it deems appropriate.

1 Except as our Compensation Committee may otherwise determine, awards not
2 assumed will terminate upon the consummation of such Covered Transaction.
3 In the event of a Covered Transaction other than a liquidation or dissolution of
4 the Company, all outstanding awards held by our non-employee directors will
accelerate and vest in full.

5 *Adjustment.* In the event of certain corporate transactions (including, but not
6 limited to, a stock dividend, stock split or combination of shares,
recapitalization or other change in the Company's capital structure that

7 ***

8 constitutes an equity restructuring within the meaning of ASC 718), our
9 Compensation Committee will make appropriate adjustments to the maximum
10 number of shares that may be delivered under and the individual limits
11 included in the 2014 Plan, and will also make appropriate adjustments to the
12 number and kind of shares of stock or securities subject to awards, the exercise
13 prices of such awards or any other terms of awards affected by such change.
14 Our Compensation Committee may also make the types of adjustments
described above to take into account distributions to stockholders and events
other than those listed above if it determines that such adjustments are
appropriate to avoid distortion in the operation of the plan.

15 *Amendment and Termination.* Our Compensation Committee can amend the
16 2014 Plan or outstanding awards, or terminate the 2014 Plan as to future
17 grants of awards, except that our Compensation Committee will not be able
18 alter the terms of an award if it would affect materially and adversely a
19 participant's rights under the award without the participant's consent (unless
20 expressly provided in the 2014 Plan or reserved by our Compensation
Committee at the time of grant). Stockholder approval will be required for any
amendment to the extent such approval is required by law, including the Code
or applicable stock exchange requirements.

21 **Federal Income Tax Consequences Under 2014 Plan**

22 The following is a summary of some of the material federal income tax
23 consequences associated with the grant and exercise of awards under the 2014
24 Plan under current federal tax laws and certain other tax considerations
25 associated with awards under the 2014 Plan. The summary does not address
tax rates or non-U.S., state or local tax consequences, nor does it address
employment-tax or other federal tax consequences except as noted.

26 *Restricted Stock.* A participant who is awarded or purchases shares subject to a
27 substantial risk of forfeiture generally does not have income until the risk of
28 forfeiture lapses. When the risk of forfeiture lapses, the participant has
ordinary income equal to the excess of the fair market value of the shares at

1 that time over the purchase price, if any, and a corresponding deduction is
2 generally available to the Company. However, a participant may make an
3 election under Section 83(b) of the Code to be taxed on restricted stock when
4 it is acquired rather than later, when the substantial risk of forfeiture lapses.
5 An 83(b) election must be made not later than thirty (30) days after the
6 transfer of the shares to the participant and must satisfy certain other
7 requirements. A participant who makes an effective 83(b) election will realize
8 ordinary income equal to the fair market value of the shares as of the time of
9 acquisition less any price paid for the shares. A corresponding deduction will
generally be available to the Company. Fair market value for this purpose is
determined without regard to the forfeiture restrictions. If a participant makes
an effective 83(b) election, no additional income results by reason of the
lapsing of the restrictions.

10 For purposes of determining capital gain or loss on a sale of shares awarded
11 under the 2014 Plan, the holding period in the shares begins when the
12 participant realizes taxable income with respect to the transfer. The
13 participant's tax basis in the shares equals the amount paid for the shares plus
14 any income realized with respect to the transfer. However, if a participant
15 makes an effective 83(b) election and later forfeits the shares, the tax loss
realized as a result of the forfeiture is limited to the excess of what the
participant paid for the shares (if anything) over the amount (if any) realized in
connection with the forfeiture.

16 *ISOs.* In general, a participant realizes no taxable income upon the grant or
17 exercise of an ISO. However, the exercise of an ISO may result in an
18 alternative minimum tax liability to the participant. With some exceptions, a
19 disposition of shares purchased under an ISO within two years from the date
20 of grant or within one year after exercise produces ordinary income to the
21 participant (and generally a deduction to the Company) equal to the value of
22 the shares at the time of exercise less the exercise price. Any additional gain
23 recognized in the disposition is treated as a capital gain for which the
24 Company is not entitled to a deduction. If the participant does not dispose of
the shares until after the expiration of these one and two-year holding periods,
any gain or loss recognized upon a subsequent sale is treated as a long-term
capital gain or loss for which the Company is not entitled to a deduction.

25 *NSOs.* In general, a participant has no taxable income upon the grant of an
26 NSO but realizes income in connection with exercise of the option in an
amount equal to the excess (at time of exercise) of the fair market

27 ***

28 value of the shares acquired upon exercise over the exercise price. A
corresponding deduction is generally available to the Company. Upon a

1 subsequent sale or exchange of the shares, any recognized gain or loss is
2 treated as a capital gain or loss for which the Company is not entitled to a
3 deduction. An ISO that is exercised more than three months after termination
4 of employment (other than termination by reason of death) is generally treated
5 as an NSO. ISOs are also treated as NSOs to the extent they first become
6 exercisable by an individual in any calendar year for shares having a fair
7 market value (determined as of the date of grant) in excess of \$100,000.

8 *SARs.* The grant of a SAR does not itself result in taxable income, nor does
9 taxable income result merely because a SAR becomes exercisable. In general,
10 a participant who exercises a SAR for shares of stock or receives payment in
11 cancellation of a SAR will have ordinary income equal to the amount of any
12 cash and the fair market value of any stock received. A corresponding
13 deduction is generally available to the Company.

14 *Restricted Stock Units.* The grant of a restricted stock unit does not itself
15 generally result in taxable income. Instead, the participant is taxed upon
16 vesting (and a corresponding deduction is generally available to the
17 Company), unless he or she has made a proper election to defer receipt of the
18 shares (or cash if the award is cash settled) under Section 409A of the Code
19 (“**Section 409A**”). If the shares delivered are restricted for tax purposes, the
20 participant will instead be subject to the rules described above for restricted
21 stock.

22 *Section 162(m).* Stock options, SARs and certain performance awards under
23 the 2014 Plan are generally intended to be exempt or eligible for exemption
24 from the deductibility limits of Section 162(m). However, as discussed above
25 in “Reasons for Seeking Stockholder Approval,” the Compensation
26 Committee will have discretionary authority to provide compensation that is
27 not exempt from the limits on deductibility under Section 162(m).

28 *Section 409A.* Section 409A imposes an additional 20% income tax, plus, in
some cases, a further income tax in the nature of interest, on nonqualified
deferred compensation that does not comply with deferral, payment-timing
and other formal and operational requirements specified in Section 409A and
related regulations and that is not exempt from those requirements. Stock
options and SARs granted under the 2014 Plan are intended to be exempt from
Section 409A. The 2014 Plan gives the Compensation Committee the
flexibility to prescribe terms for other awards that are consistent with the
requirements of, or an exemption from, Section 409A.

Certain Change of Control Payments. Under Section 280G of the Code, the
vesting or accelerated exercisability of options or the vesting and payments of
other awards in connection with a change of control of a corporation may be
required to be valued and taken into account in determining whether

participants have received compensatory payments, contingent on the change in control, in excess of certain limits. If these limits are exceeded, a substantial portion of amounts payable to the participant, including income recognized by reason of the grant, vesting or exercise of awards, may be subject to an additional 20% federal tax and may be non-deductible to the Company.

New Plan Benefits

Other than certain restricted stock units granted contingent on approval of the 2014 Plan by our stockholders (the “*Contingent RSU Grants*”), the Compensation Committee will have full discretion to determine the number and amount of awards to be granted to employees under the 2014 Plan, subject to the terms of the plan. Therefore, other than the Contingent RSU Grants, which are set forth in the table below, the future benefits or amounts that would be received by the executive officers and the groups named in the table below under the 2014 Plan are not determinable at this time.

Name and Position	Dollar Value(1)	Number of Units
Keith A. Katkin, President and Chief Executive Officer	\$1,006,425	354,375
Rohan, Palekar Senior Vice President Chief Commercial Officer	\$ 351,450	123,750
Joao Siffert, M.D. Senior Vice President, Research and Development, Chief Scientific Officer	\$ 351,450	123,750
Christine G. Ocampo Vice President, Finance	\$ 126,025	44,375
Executive Group	\$1,835,350	646,250
Non-Executive Director Group	—	—
Non-Executive Officer Employee Group	\$2,212,616	779,090

(1) Dollar value for the Contingent RSU Grants reflects the \$2.84 closing price of our common stock on December 13, 2013, the date the awards were granted, contingent upon stockholder approval of this Proposal No. 4.

47. The Proxy, however, is deficient in its disclosure regarding Proposal 4, as follows:

- The dilutive impact of issuing the requested additional shares may have on existing shareholders, including a burn rate and overhang analysis. The Board fails to disclose any concrete estimate of the dilutive effect that the Company’s stockholders

1 can expect from the issuance of up to 17,000,000 additional
2 shares;

- 3 • The projected stock grants under consideration for executives and
4 directors and the Company's historical grant practices;
- 5 • The quantitative data used by the Board to determine the number
6 of additional shares requested to be authorized. While the Proxy
7 at page 12 recommends that the Company's shareholders approve
8 the authorization of an additional 17,000,000 shares, the Proxy
9 fails to disclose what the Board considered before recommending
10 that the Company's shareholders approve these additional shares;
- 11 • The criteria or measures which the Compensation Committee
12 relied upon when issuing Stock Appreciation Rights or Restricted
13 Stock. The Proxy at pages 14-15 provides that the Plan "provides
14 for the award of stock options, SARs, restricted stock, RSUs,
15 dividend equivalents, performance share awards, performance
16 stock units, stock payments, deferred stock and performance-
17 based awards or any combination thereof," but the Proxy fails to
18 disclose the criteria used by the Board to grant such awards.

16 Not only is the Proxy materially misleading and incomplete for the reasons stated
17 above, but it also deficient in its §162(m) disclosures as well.

18
19 48. The Proxy is deficient in its disclosures regarding §162(m), as follows:

- 20 • The Proxy falsely represents to shareholders that the Company's
21 compensation programs allow the Compensation Committee to
22 award tax-deductible performance-based compensation under
23 §162(m);
- 24 • There is no mention of the Board's decision not to seek
25 shareholder reapproval of the 2005 Plan at the 2011, 2012, or
26 2013 Annual Meeting in order to regain "shareholder-approval"
27 status for purposes of §162(m);
- 28 • The Board fails to disclose any tax liability incurred as a result of
the expiration of "shareholder-approval" status for purposes of
§162(m);

- The Proxy erroneously states that deductions under Section 162(m) are permitted up to \$2 million when the law limits such deductions to \$1 million.

49. It is clear that Avanir has failed to disclose material information in its Proxy. Absent this Court's intervention, Avanir's public shareholders will be irreparably harmed by being forced to cast an uninformed vote in favor of Proposal 4 without full and adequate disclosure. Monetary damages will not compensate shareholders for the value of material information necessary for the Company's public shareholders' right to cast this fully-informed vote.

50. Accordingly, the Shareholder Vote should be enjoined until the Company provides adequate disclosures regarding Proposal 4 and complies with IRS§ 162(m).

FIRST CAUSE OF ACTION
CLAIMS FOR BREACHES OF FIDUCIARY DUTIES AGAINST THE
INDIVIDUAL DEFENDANTS

51. Plaintiff repeats and realleges each allegation set forth herein.

52. The Individual Defendants have violated fiduciary duties of care, loyalty, good faith, and complete candor owed to Avanir Pharmaceuticals' public shareholders.

53. Moreover, the Individual Defendants have failed to fully disclose to Plaintiff and the Class all material information necessary to make an informed decision regarding Proposal 4.

54. By reason of the foregoing acts, practices, and course of conduct, the Individual Defendants have failed to exercise ordinary care and diligence in the

1 exercise of their fiduciary obligations toward Plaintiff and the other members of the
2 Class.

3 55. As a result of the actions of the Individual Defendants, Plaintiff and the
4 Class will suffer irreparable injury if they are forced to vote on Proposal 4 without
5 adequate information.

6 56. Plaintiff and the members of the Class have no adequate remedy at law.
7

8 **SECOND CAUSE OF ACTION**
9 **VIOLATIONS OF SECTION 14(A) OF THE EXCHANGE ACT AND RULE**
10 **14A-9 PROMULGATED THEREUNDER**
11 **(INDIVIDUAL CLAIMS AGAINST ALL DEFENDANTS)**

12 57. Plaintiff repeats and realleges each allegation set forth herein.

13 58. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the
14 Exchange Act provides that a proxy statement shall not contain “any statement
15 which, at the time and in the light of the circumstances under which it is made, is
16 false or misleading with respect to any material fact, or which omits to state any
17 material fact necessary in order to make the statements therein not false or
18 misleading.” 17 C.F.R. §240.14a-9.

19 59. Defendants have issued the 2013 Proxy. The 2013 Proxy violates
20 Section 14(a) and Rule 14a-9 because, as described above, it contains false and
21 misleading statements.

22 60. The misrepresentations and omissions in the 2013 Proxy are material to
23 Plaintiff, and Plaintiff will be deprived of his entitlement to cast a fully informed
24 vote if such misrepresentations and omissions are not corrected prior to the 2013
25 Annual Meeting.

26 **PRAYER FOR RELIEF**
27
28

1 WHEREFORE, Plaintiff demands judgment and preliminary and permanent
2 relief, including injunctive relief, in his favor and in favor of the Class and against
3 Defendants as follows:

4 A. Declaring that this action is properly maintainable as a class action and
5 certifying Plaintiff as class representative and Plaintiff's counsel as class counsel;

6 B. Declaring and decreeing that the Proxy with regard to Proposal 4 was
7 issued in violation of federal law, Section 162(m) and/or breach of the fiduciary
8 duties of the Individual Defendants and is therefore unlawful;

9 C. Enjoining Defendants from accepting votes or consummating the
10 Shareholder Vote on Proposal 4, until the Company takes corrective measures;

11 D. Awarding Plaintiff the costs and disbursements of this action, including
12 reasonable attorneys' and experts' fees.

13 **JURY DEMAND**

14 Plaintiff demands a trial by jury.

15 DATED: January 13, 2014

FARUQI & FARUQI, LLP

By: 
David E. Bower

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Los Angeles, CA 90024
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Fax: (212) 983-9331

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Cormac J. Carney and the assigned Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

8:14-cv-00053-CJC(RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

January 14, 2014

Date

By APEDRO
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☒ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) ROBERT MASTERS, Individually And On Behalf Of All Others Similarly Situated,	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) AVANIR PHARMACEUTICALS, INC., et al.,
(b) County of Residence of First Listed Plaintiff <u>San Diego County</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>Orange County</u> (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. David E. Bower, FARUQI & FARUQI, LLP, 10866 Wilshire Boulevard, Suite 1470, LA, CA 90024. Telephone: (424) 256-2884.	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed from State Court <input type="checkbox"/> 3. Remanded from Appellate Court <input type="checkbox"/> 4. Reinstated or Reopened <input type="checkbox"/> 5. Transferred from Another District (Specify) <input type="checkbox"/> 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ over \$5,000,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Federal Securities Exchange Act of 1934, 15 U.S.C. section 78aa, and Federal Internal Revenue Service 162(m) violations, and breaches of fiduciary duties against the individual defendants.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth In Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 154 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	REAL PROPERTY	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
	<input type="checkbox"/> 230 Rent Lease & Ejectment		<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

CV-71 (11/13)

CIVIL COVER SHEET

Page 1 of 3

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column C
☒ only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the
SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C.2 to the right. →

C.2. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column D
☐ only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the
EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the
WESTERN DIVISION.
Enter "Western" in response to Question D below.

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Southern

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):** _____

DATE: January 13, 2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health Insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability Insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's Insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers Insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))